

Exhibit J

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Helena, MT

December 15, 2006

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THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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In Re: PHARMACEUTICAL) MDL DOCKET NO.
INDUSTRY AVERAGE WHOLESALE) CIVIL ACTION
PRICE LITIGATION) 01CV12257-PBS

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THIS DOCUMENT RELATES TO:)
ALL ACTIONS)

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HIGHLY CONFIDENTIAL
VIDEOTAPE 30(b)(6) DEPOSITION OF
JEFF BUSKA, VOLUME III

Taken at 33 South Last Chance Gulch
Helena, Montana

Friday, December 15, 2006 - 9:05 a.m.

Reported by Mary R. Sullivan, RPR, RMR, Freelance
Court Reporter, Notary Public, residing in Missoula,
Montana.

Helena, MT

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1 document for us?

2 A. Yes.

3 Q. What is this document?

4 A. It's a document that was received by the
5 State Health Policy and Services Division,
6 September 4, 2001. It's the report on the average
7 sales price from Bayer.

8 Q. And what date is reflected as the date
9 of receipt of this document by the Montana--State
10 of Montana?

11 A. It's the date it was date stamped in as
12 received by our administrative staff.

13 Q. And I'm sorry, what date is that?

14 A. The date--the date stamp.

15 Q. Yeah, and what date is that, I'm sorry?

16 A. Oh, September 4th, 2001.

17 Q. Does Exhibit Buska 052 reflect the
18 average sale price information from Bayer
19 Corporation that was required to be provided under
20 the settlement agreement between the State of
21 Montana and Bayer?

22 A. Yes, it has the NDCs and the average

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1 AWP, and then later on, then it has the cover
2 letters from previous documents that we've
3 reviewed dated August 30th, 2001 received by the
4 State of Montana Health Policy and Services
5 Division September 14th, 2001.

6 Q. Did Exhibit Buska 055, did that come out
7 of Montana Medicaid files?

8 A. Yes.

9 Q. And specifically, did Exhibit Buska 055
10 come from the Medicaid pharmacy program officer
11 files that you were referencing earlier?

12 A. Yes.

13 Q. The average sale price reports that
14 Montana received from Bayer did not include
15 handwriting in the average sale price report
16 itself; is that right?

17 A. That's correct.

18 Q. Are you able to tell us how the
19 handwriting that appears on Exhibit Buska 055 came
20 to appear on that document?

21 A. It would have been handwritten--it is
22 the handwriting of Shannon Marr who was the

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1 **pharmacy program officer at that time.**

2 Q. And so that the record is clear, what
3 I'm referencing in terms of handwriting initially
4 is--do you see in the very first page, which is
5 Montana 076440, I'm looking at a column that is--
6 has handwriting AWP. Do you see that?

7 A. Yes.

8 Q. And then under that column, there's a
9 series of entries in--in--in handwriting. Do you
10 see those?

11 A. Yes, to the left of the Average Sales
12 Price.

13 Q. Yes.

14 A. Yes.

15 Q. So--and to the left of the typed-in
16 average sale price information.

17 A. Yes.

18 Q. And so you're able to today testify for
19 Montana that--whose--whose handwriting is--is
20 this?

21 A. This is Shannon Marr's handwriting.

22 Q. And remind me who Shannon Marr was--

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1 A. Shannon Marr was the pharmacy program
2 officer at the time.

3 Q. What are the handwritten entries?

4 A. The handwritten entries, I would imagine
5 what she did is she went into our claims payment
6 system and looked up the NDC for every one of
7 these--these drugs and indicated the--what the
8 average wholesale price was probably for the
9 current time period, and when she did this, it's
10 not dated as to when she did this, these hand--
11 these entries on here, but would have been the
12 average sales price--or average wholesale price at
13 that time that was in our reimbursement system.

14 Q. Well, let's just take a for example.
15 The--the last entry on the first page, do you see
16 that? It's the product name is Ciprofloxacin HCL
17 750 milligrams, 100s, UD?

18 A. Yes.

19 Q. And that--that has under the AWP column--
20 the entry is 4.82740; is that right?

21 A. That's correct.

22 Q. And then the typed-in average sale price

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1 for that same product is 3.42934; is that right?

2 **A. No.**

3 **Q. Oh, did I say--**

4 **A. 3.429394.**

5 **Q. Thank you for the correction. Then--**
6 now, the average sale price information comes from
7 Bayer Corporation; is that right?

8 **A. That's correct.**

9 **Q. The AWP information that appears comes**
10 from what source?

11 **A. Comes from a hand entry by the pharmacy**
12 **program manager by looking up the reimbursement**
13 **rates, the AWP prices that we have in our claims**
14 **processing system.**

15 **Q. And that AWP information is available by**
16 any one of the Medicaid--Montana Medicaid
17 representatives?

18 **A. Yes.**

19 **Q. They can access that?**

20 **A. Yes. Individuals that have security**
21 **clearance to access the claims file--the claims**
22 **payment system can look this up.**

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1 **A. No, I'm not aware of any discussion**
2 **regarding it.**

3 Q. And by discussion, I'm including e-mail
4 communications or telephone conversations or in-
5 person meetings. Are you aware of--

6 **A. I'm not aware of anything like that, no.**

7 Q. You mentioned that you're not aware of
8 any similar comparison documents that compare the
9 average sale price reported figures to the AWP
10 figures for those same products. Is it fair to
11 say, though, that anyone at Montana Medicaid could
12 have performed the same comparison at any time
13 during the time that Bayer was reporting the
14 average sale price information?

15 **A. Yes, somebody could have, but likely,**
16 **no, because the document, as I indicated earlier,**
17 **wasn't given to anybody else.**

18 Q. Well, any--any of the pharmacy program
19 officers could have done such comparisons at any
20 point in their time; is that right?

21 **A. They could have, yes.**

22 Q. Well, I'm going to be the one to ask for

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1 a break now.

2 MS. BOVINGTON: Okay.

3 MR. DOSS: I should have gone earlier.

4 THE VIDEOGRAPHER: Off the record--I'm
5 sorry. Off the record at 10:19.

6 (Whereupon, the deposition was in
7 recess at 10:19 a.m., and subsequently reconvened
8 at 10:26 a.m., and the following proceedings were
9 had and entered of record:)

10 THE VIDEOGRAPHER: On the record at
11 10:26.

12 Q. (By Mr. Doss) Mr. Buska, did--did
13 Montana receive average sale price information
14 from any other pharmaceutical manufacturers--

15 A. Yes.

16 Q. --other than Bayer?

17 A. Yes, I believe we did.

18 Q. And what other manufacturers did Montana
19 receive average sale price information?

20 A. I believe I recall seeing stuff from TAP
21 Pharmaceuticals, but I can't recall any others.

22 Q. Mr. Buska, I'd like to--I've asked to

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1 A. That's my--

2 Q. What was--

3 A. --my guess.

4 Q. Yeah. What would your estimate be as to
5 what the program funding levels were back in, say,
6 1998?

7 A. I can't answer that. I don't know.

8 Q. The--the 600- to 700 million dollar
9 figure was your estimate as of this last year?

10 A. As of--yeah, as of our current,
11 probably. That's about the budget request or the
12 budget amount is in that range. I don't know what
13 the exact figure is currently.

14 Q. The response here says that Montana
15 Medicaid was not able to incorporate the Bayer ASP
16 information. That's--that's not technically
17 correct, is it? Isn't it that Montana Medicaid
18 chose not to include the average sale price
19 information into its evaluation of the estimated
20 acquisition cost for the reasons you've already
21 described?

22 A. Yeah, we didn't do any--we did not do an

1 analysis of the comparison of the rates to
2 incorporate that information into our payment
3 methodology.

4 Q. If Montana's regulations on its
5 definition of estimated acquisition cost required
6 that it utilize the Bayer average sale price
7 information, it would have done what was necessary
8 to incorporate the Bayer average sale price
9 information; is that fair to say?

10 A. Fair to say if it was required by the
11 federal government.

12 Q. Or by the state regulations.

13 A. The State of Montana--

14 Q. Yeah.

15 A. --establishes those regulations.

16 Q. Well, that's--that's my question.

17 A. Yeah.

18 Q. You would follow your regulations if--if
19 it was required you follow.

20 A. If it was required.

21 Q. Would the circumstances that led Montana
22 Medicaid not to use the Bayer average sale price